

SENT VIA EMAIL

July 24, 2014

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street
Suite 400
San Francisco, CA 94104-4606

Re: Retirement Board Governance Changes Grievance – San Jose Police Officers' Association

Dear Gregg:

On Thursday, July 17, 2014, a Step III Grievance hearing was held with the San Jose Police Officers' Association (POA) in order to review your grievance concerning sections 810 (a) and (b) of the proposed amendments to the City Charter regarding retirement board governance. The individuals attending the meeting included: yourself; John Robb, POA Vice President; James Gonzales, POA Director; Paul Kelly, POA Director; Charles Sakai, Labor Consultant for the City; Jennifer Schembri and Cheryl Parkman from the Office of Employee Relations and myself.

Background

The City has proposed a ballot measure which would amend the City Charter to grant the retirement boards the ability to hire, fire, evaluate and discipline the Director of Retirement Services. Further, this ballot measure would grant the Director the ability to hire, fire, evaluate and discipline Retirement Services staff. In your letter dated July 15, you indicate that the POA takes the position that the proposed changes to Section 810(a) and (b) would make changes to an existing benefit in violation of Section 19.2 of the current POA MOA.

The POA first filed a grievance regarding these issues on July 9, 2014 (Exhibit I). The City responded to the grievance on July 11, 2014 (Exhibit II). The Step III Grievance hearing was held on July 17, 2014.

Discussion

The grievance procedure in the POA MOA states that a grievance is "any dispute between the City and an employee, or, between the City and the Union, regarding the interpretation or

application of this Memorandum of Agreement, [.]” The POA’s grievance alleges that the City is in violation of Article 19 of the MOA. Article 19 provides as follows:

ARTICLE 19 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 19.1 *This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.*
- 19.2 *Existing benefits within the scope of representation, provided by ordinance or resolution of the City Council or provided in the San Jose Municipal Code, or provided in the Memorandum of Agreement shall be continued without change during the term of this Agreement.*
- 19.3 *It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.*
- 19.4 *Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer or negotiate on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer or negotiate on the subject matter covered herein. This provision shall not apply to matters covered by the provisions entitled "Consolidated Arbitration," in the Grievance Procedure herein.*
- 19.5 *The parties agree to re-open Article 18 of the agreement to address changes in the Sergeants' Transfer Policy.*

Section 810(a) of the proposed ballot measure states that “The City Council by ordinance shall establish one or more retirement boards to administer the retirement plans established pursuant to Article XV of the Chapter.” In past communication, the POA has articulated its concern that this would give the City Council “charter authority” to create retirement boards and by extension, to consolidate the existing two retirement boards into one board. As we discussed during the Step III Grievance hearing, City Charter Section 1002 already establishes that the City Council “may create such other boards and commissions as in its judgment are required.” Further, the City Council currently has the ability to join other retirement systems pursuant to City Charter Section 1502. These sections of the City Charter allow the City Council to create a retirement board or to join another retirement system, which could effectively reduce the number of retirement boards. Due to these existing Charter sections, the language in Section 810(a) does not change any existing benefit within the scope of representation and therefore does not violate Section 19.2 of the POA MOA.

Section 810(b) of the proposed ballot measure states, “the members of any retirement board shall be appointed and removed in a manner prescribed by ordinance with a majority of the members appointed by City Council.” The POA took issue with this section due to the belief that it could be used to “dilute the current POA representation on the existing Police and Fire Board.” During the Grievance hearing, we discussed that City Charter Section 1002 states that all

retirement board members "...shall be appointed by the Council, or by the Mayor if such is authorized by the Council, for such terms as the Council may deem advisable." Since the City Council already has this ability under the City Charter, this section of the proposed retirement board governance ballot measure does not make any changes to the status quo; therefore, Section 810(b) does not change any "existing benefit" and therefore does not violate section 19.2 of the POA MOA.

During the Grievance hearing, we also discussed that, although the City does retain the rights as currently provided in the City Charter, the intent of this language is to grant authority to the boards and to the Director of Retirement Services. The intent of the draft ballot measure language is not to consolidate the two retirement boards into one retirement board or make changes to how POA representatives on the Police and Fire retirement board are appointed at this time. If changes to these elements are brought forward at a later date, to the extent that the changes would be subject to the meet and confer process, that obligation would exist at that time. These changes would be discussed with all the stakeholders including the POA.

Decision:

After reviewing all of the information provided in your Grievance and through the discussion at the Grievance hearing, I conclude that the City's proposed ballot measure to add Section 810 to the City Charter would not violate Article 19 of the POA MOA as the language that the POA has cited are not changes to the status quo and do not change any existing benefit within the scope of representation. However, as we discussed, the City will be clarifying the intent of the ballot measure in a City Council memo for the August 5, 2014, City Council meeting. To the extent there is a meet and confer obligation over changes in the future, they would exist at that time.

Sincerely,



Alex Gurza
Deputy City Manager

c: Jennifer Schembri, Deputy Director of Employee Relations
Charles D. Sakai, Esq., Renne Sloan Holtzman & Sakai LLP
Jim Unland, POA President
John Robb, POA Vice President

Enclosure

EXHIBIT I



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July 9, 2014

Gregg McLean Adam
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gadam@cbmlaw.com

VIA E-MAIL AND U.S. MAIL

Alex Gurza
Deputy City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113
E-Mail: alex.gurza@sanjoseca.gov

**Re: Step IV Grievance: Violation of Article 19/Interpretation of
Obligation to Bargain**
File No.: 040507

Dear Alex:

The POA tried to avoid yet another fight with City labor relations over the proposed ballot language concerning Retirement Board governance. That held true in the letter submitted to you yesterday, wherein we stated our objections to part of the proposed ballot language but also highlighted a path down which the City could go in order to move forward on the remainder of the proposal. Yet in seeing your letter, later in the day yesterday to Mr. Platten, it continues an absurd approach to labor relations taken by this City, presumably under your direction. Chris gave you a line of authority—which mirrored what I put in correspondence back in April and May—establishing why the change in who determines the composition of the Police and Fire Retirement Board was within the scope of bargaining. Your letter completely ignores it despite purporting to answer all of Chris's concerns.

I suppose we should not be surprised, since despite touting how little time the City has left if it is to approve language at the August 5 Council meeting, labor relations has ignored the authorities we presented almost two months ago about why certain changes were within the scope of bargaining.

Give all of the above, and the further contents of my letters of April 7, May 14, June 3 and July 8 (all of which are attached) we seem to have a disagreement on two issues:

Alex Gurza

Re: Step IV Grievance: Violation of Article 19/Interpretation of Obligation to Bargain
July 9, 2014

Page 2

1. Whether certain proposed changes in the June 20 draft ballot proposition fall within the scope of bargaining?
2. And, if so, whether the City efforts to move forward unilaterally on them constitute a violation of article 19 of the MOA?

Please consider this a Step IV grievance on those very issues.

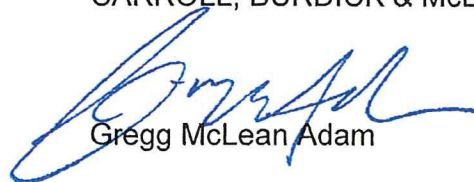
Because of the urgency of this situation, as described in your letter to Mr. Platten, please respond to this grievance by close of business on Friday. We do not have time to permit the full, normal consideration period under the MOA.

If we do not receive a response by Friday, we will move for Immediate Arbitration under Article 25.6.

With everything else going on, does the City really need to make us fight over this: Let us avoid fiddling, while Rome burns.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



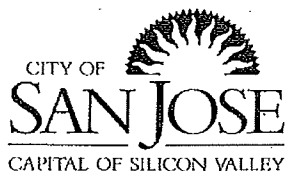
Gregg McLean Adam

GMA:jo

Enclosures

cc: Ed Shikada, City Manager
Jennifer Schembri, Deputy Director Employee Relations
Richard Doyle, City Attorney
Sean Kaldor, Chair, San Jose Police and Fire Retirement Plan Board
Harvey L. Leiderman, Esq., Reed Smith LLP
Jim Unland, President, San Jose POA
San Jose POA Executive Board
Christopher E. Platten Esq., Wylie, McBride, Platten & Renner

EXHIBIT II



Office of the City Manager

EMPLOYEE RELATIONS

SENT VIA EMAIL

July 11, 2014

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street Suite 400
San Francisco, CA 94104-4606

RE: Grievance: Violation of Article 19/Interpretation of Obligation to Bargain

Dear Gregg:

I am in receipt of your letter dated July 9, 2014, in which you filed a grievance related to Retirement Board Governance. While we understand why it would not be necessary to go through Steps I and II of the grievance procedure contained in the Memorandum of Agreement with the POA, we do think that Step III is applicable as it would be important to meet to discuss. As you know the POA MOA states:

25.4.2 Within ten (10) working days after receipt of the appeal to Step III, the Director of Employee Relations or designee shall schedule a meeting with the employee, the appropriate Employee Organization representative, and the Assistant Chief or the appropriate supervisor to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within twenty-one (21) calendar days following the meeting.

25.4.3 If the Organization is not satisfied with the decision of the Director of Employee Relations, the appropriate representative of the Organization may appeal the grievance to Step IV -- Arbitration.

Per the contract, we would like to meet with the POA so that we can understand why the POA believes the City is violating the MOA. Please give us 2-3 alternate dates and times when you are available to meet to hold the Step III grievance hearing.

Sincerely,

Alex Gurza
Deputy City Manager

c: Ed Shikada, City Manager
Rick Doyle, City Attorney
Jennifer Schembri, Deputy Director of Employee Relations
Charles Sakai, Renne, Sloan, Holtzman and Sakai
Jim Unland, President of POA